

9:00 a.m.
February 27, 2001

MINUTES – REGULAR MEETING

Evergreen Plaza Bldg. Room 206
711 Capitol Way South
Olympia, Washington

COMMISSION MEMBERS PRESENT

Ronda Cahill, Chair
Christine Yorozu, Vice Chair
Gerry Marsh, Secretary
Susan Brady, Member
Lois Clement, Member

STAFF PRESENT

Vicki Rippie, Executive Director
Susan Harris, Assistant Director
Michael Smith, Chief Technology Officer
Nancy Krier, Asst. Attorney General
Steve Reinmuth, Asst. Attorney General
Jean Wilkinson, Asst. Attorney General
Ruthann Bryant, Secretary

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Ronda Cahill at 9:00 a.m. in the Evergreen Plaza Building, Room 206, Olympia, Washington.

Minutes

Moved by Commissioner Yorozu, seconded
by Commissioner March:

Motion 01-058

**The Commission adopts the minutes
of the regular meeting of January 23,
2001 as written.**

The motion passed unanimously.

Citizen Comments/Concerns

No citizen comments were expressed.

Commissioner Comments

Commissioner Cahill noted that agenda item number 2 under staff recommendations, Sadie Charlene Cooney, Case #99-053, has been continued until a future meeting.

Commissioner Cahill also welcomed new commission member Lois Clement of Bellingham.

Commissioner Clement retired after thirty years of service with the Bellingham Public Library. She is a Past President of the American Federation of State, County and Municipal Employees Union – Council 2 in Bellingham and served on the AFSCME Executive Board for many years. She has been active in the Democratic Party, has managed many candidate campaigns, and was a board member of the Retired Senior Volunteer Program (RSVP) in Whatcom County.

Rule Making

Petition for Rule-Making

Commissioner Clement and Commissioner Marsh noted for the record that they had once been union members and are no longer active.

Robert M. Edelman filed two petitions for rule making with the Commission seeking amendments to WAC 390-16-309 and repeal of WAC 390-16-311 based on the following reasons:

1. RCW 42.17.660(2) requires controlled entity contributions to be attributed to a single entity.
2. WAC 390-16-311 amended the statute in an arbitrary and capricious manner by adding an exception to the single entity requirement with no statutory foundation.
3. Federal law governing similar federal provisions does not allow for each controlled entity to maintain a separate contribution limit.
4. WAC 390-16-311 grants exceptions to selected organizations without authority.
5. Large organizational contributors continue to have a disproportionate influence on elections because WAC 390-16-311 illegally permits multiple units to have separate contribution limits.

Assistant Attorney General Nancy Krier presented staff's analysis and recommendations on the Petitions for Rule-Making beginning with a brief

rulemaking history of the two rules. The voters approved Initiative 134 in November 1992 and it became effective in December 1992 and led the Commission to begin rulemaking activities in 1993 to implement the initiative. Ms. Krier commented that the rulemaking process was quite involved with extensive input from staff, attorneys, stakeholders and the public over an almost nine-month period resulting in the Commission's unanimous decision to adopt the final rules. Since adoption, the rules have been in place for almost seven years and, with the exception of the present petitions by Mr. Edelman, no person or organization has expressed confusion over the rules, or has submitted requests for the Commission to amend or clarify the rules, or has otherwise sought court action to invalidate the rules.

Ms. Krier responded to the arguments raised in the petitions as follows:

1. The first sentence of RCW 42.17.660(2) requires that "[T]wo or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association." This type of structural relationship, or affiliation, has over the years been called "vertical affiliation." WAC 390-16-309(1) implements this part of the statute by clarifying which units of organizations are automatically affiliated for purposes of sharing one contribution limit. Since under RCW 42.17.660(2) and WAC 390-16-309(1) local units of an organization do not automatically share a limit with each other, WAC 390-16-311 further implements RCW 42.17.660(2) by clarifying those circumstances under which local units would maintain their own separate limit or, conversely, share one contribution limit.

The second sentence of RCW 42.17.660(2) requires that "[A]ll contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining association, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity." This "other" type of affiliation or relationship is implemented by the analysis of the financial/maintenance/control factors explained in WAC 360-16-309(3) and, among other applications, is used to determine when one local unit controls another local unit.

Both sentences of subsection (2) of the statute must be read and given meaning, and that is what these two rules do.

2. There was no arbitrary and capricious action. The rule was developed with much thought and input from the public and does not create an exception to the statute. It merely implements the statute in a logical manner. Even if there is room for other opinions, that does not mean the Commission's interpretation is arbitrary and capricious. The courts have given great weight to the Commission's interpretation of chapter 42.17 RCW for those portions of the statute the Commission implements.
3. Federal elections law, while considered during the Commission's rulemaking process, is not the same as state law, and does not preempt the state law or the Commission's interpretation of the state law at issue here.
4. WAC 390-16-309 and 311 merely interpret and clarify the statutory language in a reasonable and logical manner. What is described as an "exception" is nothing more than a practical application of the actual statutory language. Moreover, the "staying out" rule is consistent

with other PDC statutes and rules in the scope of PDC regulation: with respect to elections and campaigns, the PDC does not regulate entities that do not engage in the election or campaign process.

5. The Petitions seek to regulate in a manner that was ultimately not adopted as a reasonable interpretation of the statute by the Commission in 1994, and currently is not consistent with case law trends regarding limiting free speech rights and participation by organizations in the political process.

In conclusion, Ms. Krier stated that the regulations, while complex, are clear. They are authorized by RCW 42.17.660 and the Commission's authority to adopt rules pursuant to RCW 42.17.370. The regulations do not conflict with state law; they interpret and implement state law.

Mr. Robert Edelman argued that the language of WAC 390-16-309 contains syntax errors, thereby leading to the same absurd conclusion that every combination of a superior and subordinate organization creates a separate and unique entity. Mr. Edelman also stated that WAC 390-16-311 as currently adopted by the Commission conflicts with the explicit statutory language of RCW 42.17.660 and illegally amends the statute.

Attorney James Oswald, representing the Washington State Labor Council, appeared and commented that all parties to this process in 1992 through 1994 understood and accepted that this interpretation was a reasonable interpretation of the initiative and because the regulations reflect a correct construction of the underlying statute, and are well within the authority of the Commission, the petition should be rejected.

Jami Lund, representing the Evergreen Freedom Foundation, commented that WAC 390-16-311 creates a fictional test enabling entities whose controlling "parent" is not participating in a given

candidate campaign to avoid compliance with the single contribution limit provision contained in the statute. He added that the statute does not carve out a participation or lack of participation exception for the parent/controlling entity but rather requires that all affiliated entities be treated as a single entity subject to a single contribution limit regardless of participation in the election.

Commissioner Brady stated that based on written materials, testimony and lack of opposition from the parties or the legislature, she feels that the petitions should be denied.

Commissioner Cahill commented that the initial rulemaking process was not done in a casual manner and the rule has always been applied in a very evenhanded manner. She also noted that she does not feel Mr. Edelman's case is valid and the rule is an appropriate one.

Motion 01-059

Moved by Commissioner Brady, Seconded by Commissioner Cahill:

The Commission denies the Petitions for amendment of WAC 390-16-309 and repeal of WAC 390-16-311.

The motion passed unanimously.

Continuation of Rule Making

Vicki Rippie reported on a series of five possible rule changes that would increase the dollar threshold at which candidates and political committees would be required to submit full C-Series reports with the Commission and County Auditors.

WAC 390-16-105

Abbreviated campaign reporting – eligibility. Staff is requesting that this rule be repealed due to the requested amendments to other rules.

WAC 390-16-150

Mini campaign reporting. This proposed amendment would increase the overall contribution and expenditure dollar thresholds to

\$3,500 and the aggregate single contributor dollar threshold to \$300.

WAC 390-16-111

Abbreviated campaign reporting – Special fund raising events. This proposed rule change clarifies that the \$200 single contributor threshold does not apply to a fundraising event so long as funds received from any person during the campaign or calendar year do not exceed the limit.

WAC 390-16-011

Forms – Registration Statement for Political Committees. Amend this rule to reflect the changes in mini reporting and eliminate reference to abbreviated reporting.

WAC 390-16-012

Forms – Registration Statement for Candidates. Amend this rule to reflect the changes in mini reporting and eliminate reference to abbreviated reporting.

Staff is requesting preliminary approval of the draft language and concurrence to proceed with the rule making process. Upon approval, a public hearing will be scheduled for April 24, 2001 and if adopted at that time, the rules would become effective by June 1, 2001.

Motion 01-160

Moved by Commissioner Marsh, seconded by Commissioner Clement:

The Commission authorizes staff to move forward with the rule-making process.

The motion passed unanimously.

WAC 390-24-200

Ms. Rippie reported that this rule outlines what is required in reporting real property on the Personal Financial Affairs Statement.

Staff is proposing that this rule be amended to reflect that reporting the street address of real property would not be mandatory, but would be included with the other options of reporting the assessor's parcel number, the abbreviated legal

description appearing on property tax statements, or the complete legal description.

Motion 01-161

Moved by Commissioner Yorozu, seconded by Commissioner Brady:

The Commission authorizes staff to move forward with the rule-making process.

The motion passed unanimously.

Advisory Matter

Susan Harris summarized a request for guidance from John White regarding RCW 42.17.710, the legislative session freeze provision, and its impact on a political committee established to encourage a legislator to seek local office.

Ms. Harris reported that John White stated that the activities of the committee would be undertaken independently of and without consultation with or authorization from the sitting legislator. If the legislator runs for county office, the officers of the draft committee would not serve as officers of her campaign committee, except that the treasurer for the draft committee would likely serve as treasurer for her campaign committee. He also stated that the draft committee would not make a contribution to any sitting legislator who may assist it in fund raising.

Staff recommended that the Commission determine the following:

1. That RCW 42.17.710 does not prohibit the Draft Kathy Lambert Committee from soliciting or accepting contributions during session freeze because it is not employed by or acting on behalf of Representative Lambert.
2. That pursuant to WAC 390-05-210 (3)(d), the Commission find that if the same person serves as treasurer for both committees, the funds spent by the draft committee constitute contributions to Representative Lambert should she decide to run for county council.

3. That if other legislators solicit or accept funds for the draft committee during session freeze, RCW 42.17.710 would not be violated if those funds are held in a separate account and not spent for the benefit of an incumbent state official or known candidates, including Representative Lambert. (WAC 390-17-400(12)). However, since the purpose of the draft committee is to encourage Representative Lambert to run for county council and to later support her candidacy for that office, then no state official may solicit or accept contributions to the draft committee for this purpose.

Susan Harris noted that money spent by the draft committee would constitute contributions to a candidate's campaign committee if the draft committee and the campaign committee shared an officer, such as the treasurer, because that person would be considered to be working "on behalf of the committee or candidate."

Attorney John White was present and addressed the Commission commenting that experienced treasurers are few and committees are better served if knowledgeable persons are in the key compliance position for political committees. However, if this would disqualify the draft committee from being independent, it will replace its treasurer to avoid even the appearance of coordination.

Commissioner Brady commented that she understands the request but strongly opposes the draft committee raising funds during the session freeze period since it creates a loophole of which future committees may take advantage.

Commissioner Cahill requested that staff draft an advisory memo to reflect that the treasurer, other officers or agents cannot serve on both committees.

Motion 01-162

Moved by Commissioner Cahill, seconded by Commissioner Marsh:

The Commission adopts staff recommendations regarding whether a political committee formed to draft a legislator to run for county office could raise funds during the session freeze period.

Voting For: Commissioners Marsh, Cahill and Clement.

Voting Against: Commissioners Brady and Yorozu.

The motion passed.

Legislation

Nancy Krier briefed the Commission on pending legislation that clarifies the circumstances under which an executive session may be held to discuss litigation. She also summarized other proposed bills that would address other sections of the Open Public Meetings Act, including the statutes governing agendas and advance notice provisions.

Assistant Attorney General

Nancy Krier reported on the status of pending litigation, noting that the State's case against the WEA has been scheduled for May 2001 in Thurston County Superior Court.

Enforcement Matters

Hearings

*Kitsap County Republican
Party, case #00-241*

Assistant Attorney General Steve Reinmuth summarized the case against Kitsap County Republican Party for violations of RCW 42.17.060, 42.17.065, 42.17.080 and 42.17.090 for failing to timely deposit monetary contributions, and failing to file or timely file reports of contributions and expenditures with the Commission and the Kitsap County Auditor's Office during 1999 and 2000. Mr. Reinmuth also read the Stipulated Facts, Violation and Penalty into the record and noted

that Kitsap County Republicans failed to timely file 52 reports. However the committee has recently demonstrated a good faith effort to comply with the law and has found a new treasurer.

John White, Attorney for Kitsap County Republicans, briefly addressed the Commission and emphasized the unintentional nature of the violation and the committee's commitment to future compliance.

Motion 01-163

Moved by Commissioner Cahill, seconded by Commissioner Brady:

The Commission accepts the Stipulation of Facts, Violation and Proposed Penalty of \$2,500 with \$1,500 suspended in PDC Case #00-887, Kitsap County Republican Party as written.

The motion passed unanimously.

*Concerned Citizens for Better
Government/Joseph Coomer
Case #00-241*

Mr. Reinmuth summarized the case against Concerned Citizens for a Better Government and Joseph Coomer, Treasurer, case #00-241 for alleged violations of RCW 42.17.080 and 42.17.090 for failing to properly or timely file reports of contributions and expenditures during 1999 and 2000.

Mr. Reinmuth also reported that after numerous public complaints against Mr. Coomer and Concerned Citizens for a Better Government, an audit was done resulting in a brief enforcement hearing held in 1998 where Mr. Coomer was found in violation of RCW 42.17.040 for failing to timely file a statement of organization, and RCW 42.17.065, 42.17.080 and 42.17.090 for failing to maintain accurate and detailed records and for failing to timely report contributions and expenditures. He was assessed a penalty of \$500 with \$100 suspended on the condition the Respondent not commit any further violations of

RCW 42.17 during the next two years. Mr. Coomer requested a review of the results of the brief enforcement hearing by the full Commission in January 1999. The Commission took no action and the initial order became a final order. Joseph Coomer and Concerned Citizens for Better Government did not pay the assessed penalty, and the matter was turned over to the Attorney General's Office for collection. A hearing was held in Thurston County Superior Court and a judgment was entered against him for collection of the penalty.

Mr. Reinmuth also noted that Mr. Coomer, through Concerned Citizens for a Better Government, continued supporting and opposing candidates and ballot propositions during 1999 not reporting any contribution or expenditure information until after the November 2, 1999 general election. Joseph Coomer and Concerned Citizens for a Better Government have filed no reports since March 28, 2000 even though complaints were filed in October and December 1999 and Joseph Coomer and Concerned Citizens for a Better Government continued to make campaign expenditures in August and September 2000.

Mr. Coomer sent a letter to the Commission stating that Concerned Citizens for a Better Government is a standing political action committee and is only required to file an annual report.

Motion 01-164

Moved by Commissioner Brady, seconded by Commissioner Marsh:

The Commission finds apparent violations of RCW 42.17.080 and RCW 42.17.090 by Concerned Citizens for a Better Government and Joseph Coomer, PDC case #00-241, and refers the matter to the Office of the Attorney General for appropriate action.

The motion passed unanimously.

The Commission also directed staff to prepare a press release in this matter.

Request for Review

Jay McGowan, case #00-615

Phil Stutzman reported that a brief enforcement hearing was held December 9, 1999 in which Mr. McGowan was found in violation of RCW 42.17.050 for failing to timely file a Candidate Registration Statement within two weeks of becoming a candidate for council member in the City of Cle Elum in 1999. He was assessed a penalty of \$500 with \$450 suspended.

Staff is asking the Commission to vacate the order because the jurisdiction had fewer than 5000 registered voters in the 1998 general election. As a result, candidates for council member in the City of Cle Elum in 1999 were not required to file campaign finance reports and Mr. McGowan was not required to file a Candidate Registration Statement.

Motion 01-165

Moved by Commissioner Brady, seconded by Commissioner Cahill:

The Commission vacates the order in PDC case #00-615, Jay McGowan.

The motion passed unanimously.

Staff Recommendation

Jay McGowan, case #00-134

Assistant Attorney General Steve Reinmuth updated the Commission on the status of a case referred to the Attorney General's Office in December 1999 regarding Mr. McGowan.

Mr. Reinmuth summarized Mr. McGowan's past enforcement history reporting that in 1994 he was found in violation of RCW 42.17.240, fined \$100 and failed to pay. In 1995 Mr. McGowan was found to in violation of RCW 42.17.240, fined \$400 and failed to pay. Both cases were sent to the

Attorney General's Office for collection and resulted in superior court judgment of \$739. In 1996 Mr. McGowan was found in violation of RCW 42.17.240, fined \$500 and failed to pay, then once again in 1997 Mr. McGowan was found in violation of RCW 42.17.240, fined \$500, and again failed to pay. Those cases were also referred to the Attorney General's Office for collection and a superior court judgment of \$1,449 was entered.

Mr. Reinmuth commented that Mr. McGowan immediately contacted the Attorney General's Office upon notification of the referral in December 1999 and he paid his outstanding superior court judgments, leaving only the current referred case. The Attorney General's Office has offered a settlement to Mr. McGowan for \$750, however, Mr. McGowan requested to appear before the Commission to speak on his own behalf.

Mr. McGowan reported that when he contacted the Attorney General's Office in December 1999, paid the outstanding superior court judgments and filed the missing reports, he was under the impression that everything had been taken care of until a few weeks ago when he received a letter from the Attorney General's Office regarding the current referral.

Mike Cecka, City Administrator of Cle Elum, was also present in support of Mr. McGowan and commented that Mr. McGowan is an outstanding elected official and an asset to the community. Mr. Cecka also noted that Mr. McGowan felt he had taken care of all outstanding debts in December of 1999 and would have taken care of the current referral if he had been aware that it was still pending.

Commissioner Clement commented that the Commission has gone the extra mile regarding Mr. McGowan and feels that he is still responsible for the \$750.

Commissioner Cahill requested that the Attorney General's Office set up an acceptable payment plan with Mr. McGowan.

Request for Review

Ed Oliphant, case #01-094

Susan Harris reported that Mr. Oliphant is ill and requested that his request for review be continued to a future meeting.

Vincent Tomaso, case 01-027

Commissioner Cahill noted that Mr. Tomaso is in the hospital and requested that his request for review be continued to a future meeting.

Legislation

Vicki Rippie provided an update on current legislative bills being tracked that may have an effect on the provisions of RCW 42.17. She also noted that one bill not listed in the meeting materials would allow persons who lose in the primary and have a debt to continue to receive contributions for a limited time.

Reporting Modifications

New

*Deborah Doran, Member,
Board of Trustees, Community
College District #3*

Phil Stutzman reported that Ms. Doran requests an exemption from reporting business customers paying over \$7,500 to her certified public accounting practice of which she is 80% owner. He also noted that this modification would cover both the 1999 and 2000 reporting periods.

Motion 01-166

Moved by Commissioner Cahill, seconded by Commissioner Brady:

The Commission grants the reporting modification to Deborah Doran, as requested.

The Commission finds that literal application would cause a manifestly

**unreasonable hardship on the applicant
and that a limited modification would not
frustrate the purposes of the act.**

The motion passed unanimously.

Renewals

*William Baker, Judge
Court of Appeals*

Mr. Stutzman reported that Mr. Baker requests an exemption from reporting the business and governmental customers paying over \$7,500 to Providence General Medical Center, of which his spouse is a board member.

Motion 01-167

Moved by Commissioner Brady, seconded by Commissioner Marsh:

**The Commission grants the reporting
modification to William Baker, as
requested.**

**The Commission finds that literal
application would cause a manifestly
unreasonable hardship on the applicant
and that a limited modification would not
frustrate the purposes of the act.**

The motion passed unanimously.

*International Brotherhood of
Electrical Workers, Local 77*

Mr. Stutzman reported that International Brotherhood of Electrical Workers, Local 77 requests an exemption from reporting the aggregate totals for each contributor on a monthly basis and the individual addresses of each contributor.

Ms. Rippie noted that IBEW will be required to file electronically beginning in 2002, therefore this would be the last year that a modification of this nature would be fitting.

Motion 01-168

Moved by Commissioner Brady, seconded by Commissioner Cahill:

The Commission grants the reporting modification to International Brotherhood of Electrical Workers, Local 77, as requested.

The Commission finds that literal application would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.

The motion passed unanimously.

Personal Financial Affairs Reporting

Professional Staff

Susan Harris stated that the Public Disclosure Law requires professional staff of the House, Senate, and Office of the Governor to file an annual Financial Affairs Statement. The Commission is required to conduct a review of these professional staff positions each year. The House, Senate and Governor's office have submitted a list of persons and positions they believe meet the requirements of professional staff.

The Commission approves the lists of professional staff required to file Financial Affairs Statements with the Public Disclosure Commission as proposed by the Governor's Office, House of Representatives, and State Senate.

Staff Reports

Executive Director

Vicki Rippie reported on a memo she sent to Marty Brown at the Office of Financial Management requesting a supplemental budget request for pending litigation. She noted that it is possible that PDC's requested \$137,000 would be included in any subsequent version of Governor's supplemental budget proposal.

She also commented that staff is working with school district representatives to update guidelines for compliance with RCW 42.17.130.

Assistant Director

Susan Harris announced that the 2001 Lobbyist Pictorial Directory is now available and she thanked Karen Copeland and the IT staff for their work in compiling the information necessary to complete the project.

Ms. Harris also updated the Commission on progress in implementing the JLARC recommendations, noting that staff has been working with the Department of Personnel regarding review of the qualifications for the Political Finance Specialist positions.

Commissioner Brady requested that a list of enforcement hearings and results, brief enforcement hearings and results and dismissal letters be posted on the website for public review.

Chief Technology Officer

Michael Smith reported on a meeting with the Secretary of State's office regarding data format requirements for archiving electronic documents.

Mr. Smith also commented that staff will begin working on a lobbyist Internet application that will provide an electronic filing alternative for lobbyists and lobbyist employers.

Adjournment

Commissioner Cahill adjourned the meeting at 3:05 p.m. The next meeting is scheduled for Tuesday, March 27, 2001.

Approved by the Commission 4/24/01